(24)

No. 91-194

In The

Supreme Court of the United States

October Term, 1991

QUILL CORPORATION,

Petitioner,

v.

STATE OF NORTH DAKOTA,
BY AND THROUGH ITS TAX COMMISSIONER,
HEIDI HEITKAMP,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of North Dakota

BRIEF AMICUS CURIAE OF THE MULTISTATE TAX COMMISSION IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether a state may require an out-of-state retailer, whose direct sales into the state are facilitated and benefitted by the state, to collect its use tax?

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INTEREST OF THE AMICUS CURIAE[1]

The Multistate Tax Commission ("MTC") is the administrative arm of the Multistate Tax Compact (the "Compact"). All St. Tax Guide ¶701 *et seq* (Max. Mac. 1991); St. Tax Guide ¶351 (CCH 1991). Nineteen States, including the District of Columbia, have adopted the Compact. In addition, fourteen states are associate members. The Compact seeks to facilitate proper determinations of state and local tax liability of multistate

[1] Counsel for Petitioner and Respondent have consented to the filing of this *Amicus Curiae* Brief. Their letters of consent have been filed with the Clerk of the Court.

taxpayers, promote uniformity or compatibility of state tax systems, facilitate taxpayer convenience and compliance, and avoid duplicative state taxation. Article I, Compact, ALL ST. TAX GUIDE ¶701 (Max. Mac. 1991), ST. TAX GUIDE ¶351 (CCH 1991). The Court recognized the validity of the Compact in *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978).

As described in further detail in Part III.C of this Brief, the Commission, through its "uniformity" process, its National Nexus Program, and ongoing discussions of coordination and uniformity issues with direct marketers and their trade association, has been directly involved in the issue of collection of sales and use taxes by interstate direct marketers. The Commission expects these activities to continue and expand as additional state legislatures adopt laws like the North Dakota law at issue here, in response to the growth of the direct marketing industry and its increasing share of retail sales in each state. By eliminating artificial distinctions among competing, functionally equivalent marketers, affirmance of the decision below will help to accelerate the process of coordination and cooperation among the states, and between states and taxpayers, which the Commission seeks to foster.

INTRODUCTION AND SUMMARY OF ARGUMENT: "THAT WAS THEN AND THIS IS NOW"

To a lay observer, the thought that a small out-of-state retailer with one travelling salesman visiting North Dakota would have to collect North Dakota taxes on all its North Dakota sales, but that Quill Corporation – with a thousand employees,[2] over three thousand customers in

[2] QUILL SEMI-ANNUAL OFFICE PRODUCTS CATALOGUE, Nov. 1991-April 1992, at 363 (hereinafter "QUILL CATALOGUE"). Copies

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North Dakota, and 24 tons of catalogues and a million dollars worth of products sent into the state in a year[3] – would not have to collect any North Dakota tax from its customers, might seem absurd.

To some direct-mail marketers, that anomaly is worth attempting to cast in constitutional concrete. It gives them a distinct competitive advantage over fellow direct mailers with multistate physical presence, and over all local marketers, who must collect state tax on their over-the-counter sales. In support of their position, they invoke a single case, *National Bellas Hess, Inc., v. Illinois*, 386 U.S. 753 (1967), repeating its words at every opportunity, in hopes that repetition will lend substance to their proposition that in-state physical presence is a constitutionally necessary condition for tax jurisdiction, even though it is not necessary for most other types of jurisdiction. *See, e.g., Burger King v. Rudzewicz*, 471 U.S. 462 (1989).

The legal response to their claim is not complicated:

1. *Bellas Hess* is the product of a different legal era when "the Commerce Clause was thought to prohibit the States from imposing any direct taxes on interstate commerce. [Citations omitted]. Consequently, the distinction between intrastate activities and interstate commerce was crucial to protecting the States' taxing power." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 614-15 (1981). *See Goldberg v. Sweet*, 488 U.S. 252, 265 n.16 (1989).

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of all catalogues cited have been lodged with the Clerk, and selected excerpts are contained in the Appendices. See *Bellas Hess*, 386 U.S. at 761, n. 2 (Fortas, J., dissenting).

[3] *North Dakota v. Quill Corp.*, 470 N.W.2d 203, 204, 218 (N.D. 1991); Appendix to the Petition for Writ of Certiorari at A2, A34 (hereinafter "Pet. App.").

2. In *Complete Auto Transit v. Brady,* 430 U.S. 274 (1977), the Court "renounced the formalistic approach" of its earlier cases, and decided instead "to avoid formalism and rely upon a 'consistent and rational method of inquiry [focusing on] the practical effect of a challenged tax.' " *Trinova Corp. v. Michigan Dept. of Treasury,* 111 S. Ct. 818, 828 (1991) (quoting *Mobil Oil Corp. v. Vermont,* 445 U.S. 425, 436-7 (1980)) (brackets in original). Since 1977 there has been no constitutional bar to state taxation of interstate commerce as long as it meets the four-prong test of *Complete Auto.*

3. Subsequent cases have driven home the obsolescence of *Bellas Hess. Goldberg v. Sweet* distinguished *Bellas Hess* and applied the *Complete Auto* test to sales of interstate communications services into a state, finding the test satisfied where the sales were billed or paid in the state. *Goldberg,* 488 U.S. at 263. The *Goldberg* holding applies *a fortiori* to the facts here: sales of tangible goods into a state. In *Trinova,* the Court emphasized the "value added" by sales into a state, and found jurisdiction to tax such value not because of, but in spite of, a minuscule physical presence of the seller in the state. *Trinova,* 111 S. Ct. at 830, 833-834.

4. Here, as in *Goldberg,* 488 U.S. at 254, the change in legal environment is complemented and fueled by a change in the technological environment, symbolized by the change in basic concept from "mail order" to "direct marketing," and facilitated by the universal availability of toll-free "800" numbers, inexpensive computers, overnight express service, computerized selective mailing lists, and bank credit cards.

These legal points are treated in scholarly detail in the briefs of North Dakota and its other *amici,* who collectively demonstrate that the *Complete Auto* tests are met here with flying colors. The Multistate Tax Commission

will not duplicate their arguments. Instead, the Commission, a hands-on body of state tax administrators which deals with the practical realities of state tax policies and procedures, will focus its attention on the plea for equitable relief to which Petitioner and its allies, perhaps anticipating the strength of the legal arguments against them, appear to retreat.

In essence, Quill argues that it should not be subject to North Dakota's tax laws because it doesn't get much benefit from North Dakota. The fact is that Quill has so many contacts with the state, and every other state it sells into, that the Court could avoid confronting the obsolescence of *Bellas Hess,* by finding enough of what Petitioner calls "chimerical" presence,[4] to meet the facial standards of that case. Even apart from the catalogues and packaging and waste from its products strewn all over its customers' states, Quill has direct presence in each state, as shown in Section I below. It maintains in-state agents to set up equipment and service computers. It leaves its computer software in the hands of its customers, and it checks their credit through local banks. The fact that even Quill can be found to meet this supposed "bright line" test of physical presence, notwithstanding its efforts to remain isolated by eschewing "800" numbers[5] and, until recently, by refusing credit card sales from North Dakota, demonstrates why the test is meaningless, and why the Court should not rely on it to affirm the decision below. A decision on this narrow basis would merely postpone the inevitable and deprive the states and the direct marketing industry of definitive guidance based on the practical

[4] Brief for Petitioner at 46 n. 43, *Quill Corp. v. North Dakota, cert. granted,* 60 U.S.L.W. 3257 (U.S. October 7, 1991) (No. 91-194) (hereinafter "Pet. Br.").

[5] Pet. Br. at 4.

realities of direct marketing in the United States in the 1990's, and the predictable expansion of the industry in the years ahead. Quill's most important presence in North Dakota is its economic presence, not its computer disks or its repair people, and the case should be decided on that basis.[6]

Quill's fallback equity argument is that compliance with North Dakota's use tax law would be too much of a burden. This argument requires the Court to believe that the direct marketers, who are at the frontier of computerized demographic research and data manipulation, using the most advanced database and telecommunications equipment and software to identify, contact, and sell to tens of millions of carefully selected Americans, are unable to keep track of 47 states' sales tax rates.

It should reassure Quill and the Court to know that the task of collecting multiple state taxes, which so frightens the Quills of the world, is one to which large numbers of its fellow direct marketers have accommodated. Moreover, the states, through the Multistate Tax Commission and individually, are just as anxious as the direct marketers to simplify and coordinate their tax collection activities. While these implementation issues are not of constitutional magnitude, Quill and the Court may also be comforted to know that this cooperative process

[6] The principle that sellers from afar who want to exploit the local market must bear their share of local taxes is not a new one. It was recognized in ancient Jewish law: "In the Talmudic discussion, the ruling was quite clearly that foreign and out-of-town merchants cannot be excluded, provided that they pay the local taxes." M. Tamari, In the Marketplace: Jewish Business Ethics 55 (1991). Tamari notes that "Non-payment of taxes gives the competitor an advantage which cannot be duplicated by the local merchants, no matter how efficient or cost-conscious they are." *Id.* at 61.

has already begun between the states and marketers who now collect state taxes in multiple states.

Quill's ultimate defense is to assert that the principle it reads into *Bellas Hess* is subject to revision only by Congress. We show below that Congress, by both action and inaction, has signaled the opposite conclusion: this Court has the authority and responsibility to review and, if appropriate, revise its own decisions, especially where its prior statements are the source of serious conflicts.

Quill wants to have all the benefits of exploiting the North Dakota market without bearing any of the burdens. Exempting Quill from the well accepted business responsibility of assisting in sales and use tax collection would be unfair to the state and its taxpayers and unfair to Quill's competitors who do assist the state. Such an exemption is neither required nor justified by the Constitution, by this Court's precedents, or by federal law. North Dakota's legislature and Supreme Court acted reasonably and lawfully in rejecting such an exemption and their actions should not be disturbed.

ARGUMENT

I. THE PRACTICAL EFFECT OF A PHYSICAL PRESENCE RULE WOULD BE TO ENSHRINE INEQUITABLE DISTINCTIONS AND ENCOURAGE AVOIDANCE OF TAX COLLECTION RESPONSIBILITIES

The general economic benefit from the "value added" by Quill's North Dakota sales, *Trinova Corp.*, 111 S. Ct. at 830, and from its exploitation of the state's "civilized society", *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940), is more than sufficient to meet a constitutional nexus test. But the list of Quill's direct contacts with, burdens on, and benefits from North Dakota dramatizes why no reasoned distinction can be made between Quill

and either the local merchants or competing direct marketers who happen to have sales agents or other physical presence in the state. Quill's "presence" includes:

- the wear and tear on North Dakota's roads and the additional truck traffic and air pollution attributable to the delivery of 24 tons of catalogues and a million dollars worth of (frequently heavy) office supplies,
- the police and fire protection for the goods in transit into and within the state,
- the disposal of the huge volume of catalogues and many thousands of packages and wrappings containing the delivered goods,[7]
- the availability of North Dakota courts and collection agencies to collect overdue bills,
- protection of Quill from unfair competition of unscrupulous marketers of office products by the consumer protection, law enforcement, and licensing agencies of North Dakota,
- submission by Quill to North Dakota's jurisdiction in respect to any applicable laws on usury, fair credit practices, prohibited sales, fraud, antitrust, warranties, limitations of liability, environmental protection, and food quality,[8]

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[7] Pet. App. at A34.

[8] For examples of such limitations in other states, *see* J.C. PENNEY CATALOGUE, Fall and Winter 1991, at 750 (enumerating Ohio restrictions on credit, Wisconsin notice regarding credit obligations incurred by spouses, Hawaii notice of state credit sale law). *See also* VA. CODE ANN. § 46.2-1079 (1991) (prohibiting use or sale of radar detectors). *See also Burger King v. Rudzewicz*, 471 U.S. 462, 476 (1985) ("it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines thus obviating the need for physical presence within a State in which business is conducted").

- the use of the state's banks to obtain credit references on customers,[9]
- the use of VISA and Mastercard accounts at local banks to establish immediate credit,[10]
- the provision of " 'inside delivery' or 'carry-in with setup' " services at extra cost,[11]
- for purchasers of computers, continuing technical support by telephone and "free on-site service" for one year after purchase,[12]
- the leasing of computer software to North Dakotans, allowing them to access Quill's computer,[13]
- the use of demographic information and databases gathered in-state to generate solicitation lists.[14]

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[9] Quill's current order form asks new customers desiring to be billed to provide "Bank Name, Bank Phone #, Bus.[iness] Checking Account #, Person to Contact". QUILL CATALOGUE at 361.

[10] QUILL CATALOGUE at 361. Although it appears from the record that Quill for a time discriminated against North Dakota customers by denying them the use of credit cards, its current catalogue contains no such restriction.

[11] *Id.* at 365.

[12] *Id.* at 204.

[13] Pet. App. at A29.

[14] Direct marketers access lists segmented into a dizzying array of lifestyle, life-event, demographic, geographic, and previous purchasing characteristics. Direct Marketing magazine each month carries an annotated listing of newly available lists, numbering anywhere from 25-30 entries and encompassing market segments ranging from "Texas Liberals" ("file contains 33,398 . . . Texas residents who have contributed to the campaign of Gov. Ann Richards and other democratic candidates"), *New List Bank*, 54 DIRECT MARKETING 1, May 1991 at 63, to the "Portable Technology Database" ("last 12 months buyers' list contains 26,397 names at $100 [per thousand

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The fact is that most of this list would apply to every direct marketer who substantially enters the North Dakota market, whether or not it has a store, an agent, a warehouse, or an office in the state. These are not factors which show that Quill is unique in having the requisite presence. Rather they show generically why "direct marketers" are exactly what their self-selected name implies, marketers who enter the local markets massively and directly to do from a distance, with economies of scale and modern telecommunications, precisely what local marketers do in person: make sales to local citizens. A rule which ignores this purposeful and pervasive economic presence and focuses exclusively on physical presence no matter how slight or how separate from the target of the tax, or which depends on a case by case weighing of discrete contacts, will merely perpetuate a tax dichotomy based on no functional difference.

Quill obviously cares about its customers, offering them its own "Bill of Rights."[15] But its customers have no

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names]. These top corporate officers are large volume buyers of portable computers.") *New List Bank* 53 DIRECT MARKETING 12, April 1991 at 56. The effort to add names of potential consumers can start on the day of their birth. *See* Miller, *Data Mills Delve Deep to Find Information About U.S. Consumers*, Wall St. J., March 14, 1991, at A-1. Raw name lists can then be enhanced and sorted by zip code, income level, residence rates and social position. See Advertisement, 54 DIRECT MARKETING 6, October 1991 p. 15. For those, like Quill, selling mainly to businesses, lists are available by discrete business type (e.g. dishwashing machine dealers), size of business (e.g. sales volume, number of employees) or new business entries updated through telephone directories, and can be sorted on a nationwide or individual state basis. See AMERICAN BUSINESS INFORMATION: LISTS OF 9 MILLION BUSINESSES (January 1991).

[15] QUILL CATALOGUE at 363.

right to avoid payment of their state's sales or use taxes, when they order office furniture shipped from manufacturers in Michigan, Florida, California, New Jersey, Delaware, or Tennessee[16], whether they order it from Quill by phone, fax, or mail, or from another direct marketer who sends a salesman to drop catalogues and take orders, or from a local office supply store.[17] Quill's exemption from the use tax laws would not only place Quill at an unfair competitive advantage over its in-state and out-of-state rivals who collect the state's tax, it would force these competitors and their customers to generate the tax revenues to pay for the state's direct and indirect contribution to Quill's profit-making activity in the state.

Quill and its *amici* argue that a physical presence rule is desirable, if not required, because it offers a purportedly "bright-line" test. Even putting aside the fact that litigation all over the country demonstrates that the present line is murky at best,[18] what the "physical presence"

[16] QUILL CATALOGUE at 291, 308-309.

[17] See *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359, 366 (1941) (" . . . respondent is in no position to found a constitutional right on the practical opportunities for tax avoidance which its method of doing business affords Iowa residents").

[18] *Compare Boswell v. Paramount Television Sales, Inc.*, 282 So. 2d 892, 893, 896-897 (Ala. 1973) (lease of films sufficient nexus to out-of-state lessor) *with Cally Curtis Co. v. Groppo*, 572 A.2d 302, 303, 306 (Conn.), *cert. denied*, 111 S. Ct 77 (1990). *Compare L.L. Bean, Inc. v. Department of Revenue*, 516 A.2d 820, 823, 825-826 (Pa. Commw. Ct. 1986) (state visits by customer service representatives sufficient) *with Proficient Food Co. v. New Mexico Taxation and Revenue Department*, 758 P.2d 806, 807, 808-809 (N.M. Ct. App. 1988). *Compare Good's Furniture House, Inc. v. Iowa State Board of Tax Review*, 382 N.W. 2d 145, 146-147, 150 (Iowa) *cert. denied*, 479 U.S. 817 (1986) (noting local advertising as a significant link) *with Book-of-the-Month Club, Inc. v. Porterfield*, 268 N.E. 2d 272, 274 (Ohio 1971) (local advertising insufficient to establish nexus).

test does is invite "formalistic" gaming of the system to avoid state tax responsibilities. For example, Saks & Company, the parent of the Saks Fifth Avenue retail stores throughout the nation, conducts its mail order activities through a corporate subsidiary with physical presence only in New York and California. Its "Saks Fifth Avenue Folio" mail-order catalogues are intimately connected with its store operations.[19] Nevertheless it continues to resist collecting use tax anywhere outside those two states. If the Court does not update *Bellas Hess*, Saks Fifth Avenue may continue to find itself on different sides of the line in different states.[20] On the other hand, if this Court affirms the North Dakota decision, Saks Fifth Avenue Folio will collect any appropriate taxes from all its customers, just as its stores do. The fact that Saks Fifth Avenue might not continue to attract some customers who wish to escape state tax is not an argument for maintaining the status quo. *See, e.g. Nelson v. Sears Roebuck & Co.*, 312 U.S. 359, 366 (1941). It is, rather, evidence of the unfair advantage some sellers currently enjoy, and an argument for changing the status quo. Surely any interpretation of the commerce or due process clauses which encourages or assists tax avoidance, fosters

[19] Each item lists the store department where it can be purchased, except for certain items which are listed as not available at stores or at all stores. Saks Fifth Avenue Folio accepts Saks Fifth Avenue credit cards, uses Saks' New York City office for certain mail, and, as is clear solely from the catalog cover, exploits the Saks name and good will. See SAKS FIFTH AVENUE, FOLIO: RESORT 1991 at 4, 50, Order Form following p. 46.

[20] *Compare SFA Folio Collection, Inc. v. Bannon*, 585 A.2d 666 (Conn. 1991), *cert. denied*, 111 S. Ct. 2839 (1991), *with SFA Folio Collection, Inc. v. Huddleston*, No. 89-3015-III (Tenn. Ch. App. March 11, 1991).

unfair competition between sellers of the same goods to the same customers, and erects barriers to expansion of sellers' physical facilities into other states should not be endorsed by this Court.

II. COLLECTING STATE USE TAXES IS NOT AN IMPERMISSIBLE BURDEN ON COMMERCE; IT IS A NORMAL BUSINESS FUNCTION WHICH QUILL NOW PERFORMS FOR THREE STATES, AND MANY OTHER CATALOGUE SELLERS PERFORM FOR MANY MORE STATES.

Petitioner and its numerous *amici* complain that the "burden" they would have to bear if they are subject to North Dakota's use tax law would cause "economic chaos," Pet. Br. at 9, and drive mail order companies out of business. Brief of *Amicus Curiae* Direct Marketing Association at 16, *Quill Corp. v. North Dakota*, *cert. granted*, 60 U.S.L.W. 3257 (U.S. October 7, 1991) (No. 91-194) (hereinafter "DMA Br."). Their claim echoes this Court's concern 24 years ago that collection of taxes for multiple states would draw mail order companies into a bookkeeping morass. *Bellas Hess*, 386 U.S. at 759-760. But neither the commerce clause nor due process guarantees immunize businesses from all "burdens" in the states whose economies they are exploiting. On the contrary, this Court has said that " '[i]t was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing business.' "[21]

[21] *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 623-624 (1981) (quoting *Colonial Pipeline Co. v. Traigle*, 421 U.S. 100, 108 (1975) quoting *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 254 (1938)).

Even if "burden" were a triggering mechanism which invokes the commerce or due process clauses,[22] or a factor in a "weighing" process with "contacts", Pet. Br. at 7, in today's business environment this case does not raise a serious "burden" issue. For the fact is that the additional procedures which the decision below requires of Quill and others who are resisting their state tax collection responsibilities are ones which many of their competitors and fellow multistate marketers have long accepted.

The Court's pre-*Bellas Hess* decisions in *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359 (1941) and *Nelson v. Montgomery Ward*, 312 U.S. 373 (1941), established fifty years ago the requirement of tax collection from catalogue customers by those with local retail outlets. In 1944, Justice Frankfurter, who was quite concerned about the administrative burdens on taxpayers,[23] upheld Iowa's requirement that out-of-state sellers without local offices, warehouses, or general agents collect its use tax, and said, "to make the distributor the tax collector for the State is a familiar and sanctioned device." *General Trading Co. v. Iowa*, 322 U.S. 335, 338 (1944).[24] The decision fifteen

[22] This appears to be the argument of at least one of Petitioner's *amici*. *See, e.g.* Brief *Amici Curiae* of American Council for the Blind et al. at 22, *Quill Corp. v. North Dakota*, *cert. granted*, 60 U.S.L.W. 3257 (U.S. October 7, 1991) (No. 91-194).

[23] See *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 474 (1959) (Frankfurter, J., dissenting).

[24] Justice Frankfurter thought that the existence of retail stores in-state in *Sears* and *Montgomery Ward* was "constitutionally irrelevant", *General Trading*, 322 U.S. at 338, and placed no particular emphasis on the fact that General Trading used travelling salesmen to solicit orders filled from out-of-state. In this pre-*Complete Auto* case, the dissent said that the holding was "that a state has the power to make a tax collector of one whom it has no power to tax." *Id.* at 339 (Jackson, J. dissenting).

years ago in *National Geographic v. California Board of Equalization*, 430 U.S. 551 (1977), confirmed that local presence of any type is a sufficient condition for tax collection responsibility. Thus, many direct marketers are fulfilling these tax collection responsibilities in multiple states today, without "economic chaos" and without being driven out of business. In fact, Quill itself is collecting use taxes for the three states in which it has facilities. QUILL CATALOGUE at 361.

MTC's review of over 150 recent catalogues (selected randomly but unscientifically), discloses at least 33 which require buyers in 15 or more states to remit use tax, including 9 which call for remittance of tax for all 47 states (including D.C.) with use taxes. See Appendix A. Another 30 of these catalogues collect taxes for 3 or more states, as does Quill. Among those who collect for only one or two states are such large, well-known marketers as Saks Fifth Avenue Folio, and L. L. Bean. *Id.* Justice Frankfurter's "familiar and sanctioned device" is thus already part of the normal business environment for many interstate marketers, and there is no showing that those who have so far avoided it are any less capable of fulfilling this obligation than those who are meeting it now.

Some of Petitioner's *amici* complain that they would be forced to use costly catalogue space to inform customers of their tax obligations.[25] Quill's own order form, typical of the middle ground used by many multistate marketers, rebuts that argument. It merely has a small

[25] *See, e.g.* DMA Br. at pp. 18-20; Brief of Amicus Curiae Coalition for Small Direct Marketers at 19, *Quill Corp. v. North Dakota, cert. granted* 60 U.S.L.W. 3257 (U.S. October 7, 1991), (No. 91-194).

space in its computation form for "State Sales Tax", and in an effort to be helpful to its customers, lists the tax rate in each of the three states where Quill has facilities. Quill Catalogue, at 361. Some direct sellers assume that their customers know the tax rates in their own states, and merely instruct them to "add applicable state sales tax". *See e.g.*, LORD & TAYLOR: SIGNATURE SAVINGS, Order Form following p. 34 (1991). Others list the states in which tax is due, *e.g.* GREENPEACE CATALOG, Order Form following p. 8 (1991-1992) (listing 34 states), *see* App. B, or the states which do not have sales taxes. *E.g.*, EDDIE BAUER: ALL WEEK LONG, Order Form following p. 24 (1991). Some give additional information to assist the customer in calculating the tax. *See, e.g.*, BARRIE PACE, LTD.: WINTER SALE 1991, Order Form following p. 24 (1991) (clothing exemptions); HARRY AND DAVID: 1991 HOLIDAY BOOK OF GIFTS, ORDER FORM FOLLOWING P. 18 (1991) (FOOD EXEMPTION); BUSINESSLAND, POWERFUL PRODUCTS POWERFUL SOLUTIONS, Order Form following p. 130 (1991) (instructing exempt companies to include their tax exempt certificate with their order). Sears does not list any tax rates, but instructs customers to call its "800" number to obtain calculation of shipping and handling charges and taxes. SEARS at 950B (Spring/Summer 1991). At the other extreme, J.C. Penney provides a comprehensive set of instructions: on its chart of shipping information and return centers for each state, it also lists the state sales tax rate, and other state-specific information relevant to Penney merchandise (e.g. "omit tax on footwear and clothing"). J.C. PENNEY, FALL & WINTER 1991 at 742, *see* App. C. The entire tax listing adds one column to the six other columns on the chart.[26]

[26] Although not at issue in this case, Petitioner repeatedly invokes its apprehension at the prospect of complying with

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Of course, like Sears, most sellers have phone agents who will compute the state tax and shipping charges, or check the customer's computation, when the order is taken or while the customer is filling out an order form. Businessland, for example, offers to "confirm" the computation for the customer. See BUSINESSLAND, *supra*, Order Form following p. 130. Just as Quill informs its customers that "shipping charges, if applicable, will be added to your total" by Quill (QUILL CATALOGUE at 361), Penney tells its customers that overpayment of sales taxes will be refunded, that late changes in taxes will be reflected in a corrected invoice, and that on credit orders, "we'll figure the tax and add it to your account." J.C. PENNEY, *supra* at 741.

Each of these marketers has made its own market-driven decision on how much space, detail, and help to provide for this purpose. But the fact is that a marketer who collects tax in all or most states can, if it wishes, meet the need with no more order blank space than Quill

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myriad local sales tax laws. As with state tax collections, different direct marketers have chosen different ways to deal with this issue. J.C. Penney, for example, notes to its customers the states in which there are such taxes and leaves it to the customer to apply them. *See* App. C. As noted below, if a marketer wished, it could use modern computer printing technology to print local tax instructions on each catalogue cover or order blank. In any event, this concern will be addressed in the first instance by the marketers themselves, by state and local tax authorities, and if disputes arise, by the state courts. Only if some issue of constitutional moment arises will it reach this Court. Certainly it should not be decided here in the first instance, as a hypothetical matter and without a record.

now provides. Moreover, the phone agents, who answer questions about hundreds or thousands of catalogue items and prices and shipping rules, have no difficulty answering questions about a state's tax rates. Whether they look at Penney's chart or type a zip code into their computers, the information can be readily available.

Similarly, the claim that accounting for many states' taxes would be beyond the bookkeeping capacity of a direct marketer like Quill is frivolous. The large direct marketers keep track of hundreds of thousands of customers, orders, and items in stock on large computers. They use the most sophisticated technologies to identify the most desirable demographic targets for their wares, and to decide how many and which catalogues to send them.[27] They buy, sell, sort, and refine huge mailing lists, and compare them to individualized data bases with detailed information on each prospective customer.[28] Many already personalize the order forms in their catalogues with ink-jet printed names and addresses of the recipient,[29] and could undoubtedly add state-specific information on sales taxes if they wished.[30]

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[27] *See* Egol, *Personalized Production*, CATALOG AGE, October 1991 at 78. *See also* discussion n. 14, *supra*.

[28] *Id.*

[29] As the "P" column in App. A indicates, the vast majority of the catalogues reviewed by MTC contained personalized order forms.

[30] It is now fairly common for mass magazines to contain computer generated inserts containing the name of the subscriber and localized information such as the location of the nearest store of a national chain. *See, e.g.*, TIME, Nov. 18, 1991, insert following p. 55, containing personalized message with name of subscriber and location of nearest Radio Shack. "At

(Continued on following page)

In fact, Quill prides itself on its sophisticated computer capacity. Its "integrated order fulfillment system," based on a 700 terminal "Unisys 110/1200 mainframe," provides its operators with "instant on-line access to customer files and product information, . . . [and] credit checking. . . . It determines which . . . warehouse will handle the shipment and generates detailed picking instructions for each order, complete with carton size and weight." It offers same-day shipment for orders received by 4 p.m., and as soon as the personal computer at the warehouse detects from the bar code on each package that an order has been shipped, it signals the mainframe to generate an invoice the same day.[31] Clearly, for Quill, going from 3 states to 47 will not be a significant problem.[32]

Even for the smaller direct marketer, computers capable of calculating and keeping track of tax receipts and payments are readily available and inexpensive. At the time of *Bellas Hess*, it was probably still true, as Senator Keating said in discussing Pub. L. No. 86-272,[33] that "[s]mall firms simply cannot afford the electronic gadgets now used by giant corporations for such purposes." 105 CONG. REC. 16,362 (Aug. 19, 1959). Now a fast, large

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(Continued from previous page)

present, Fingerhut uses its merchandising/publishing system to version [sic] its outer wraps based on the customer's geography," to accommodate each state's "credit rules that have to be expressed differently." Egol, *supra* note 27.

[31] Smith, *The New Frontier*, DIRECT MARKETING, September 1991 at 37.

[32] It is interesting to note that part of Quill's product line includes tax forms. QUILL CATALOGUE at 362.

[33] See discussion Part III, Section B. *infra*.

capacity personal computer which did not even exist in 1967 can be purchased by mail from Damark for $899.99, monitor and basic software included.[34] Several well reviewed business accounting programs can be purchased for under $100, and more sophisticated programs for under $300.[35] Even if a marketer sets up its own sales tax record-keeping system on a simple spreadsheet program for its own state, the cost of adding additional states after the first one is literally nil for hardware and software. It takes only a few minutes' time per state to copy the initial spreadsheet and substitute each additional state's tax rate.

Whether for large direct sellers with large computers and large numbers of sales in each state, or smaller sellers with small computers and small numbers of sales in most states, this is hardly an issue of constitutional significance. As more marketers collect for more states the task can only get easier, for the software providers (after designing programs to meet the needs of their own direct mail sales) will compete to offer these programs at low cost to all comers. Almost every direct marketer must have some system for collecting and remitting sales and use taxes for at least one state now. It is hardly a burden at all, let alone a burden of constitutional proportions, to

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[34] Damark Advertisement, USA Today, Dec. 6, 1991 at 5b ("In MN add 6.5% sales tax").

[35] *See, e.g.*, Peachtree Accounting Advertisement, PC MAGAZINE Dec. 31, 1991 at 254 (offering accounting package with multiple taxation feature for $298); Software Add-Ons Advertisement, PC MAGAZINE Dec. 31, 1991 at 431 (listing several accounting programs retailing for as little as $29). One such program, Pacioli 2000, provides capability for creating up to 1000 different sales tax codes. PACIOLI 2000 USER'S MANUAL at 127 (1990).

require that, as they and their markets grow, their responsibility for collecting state use taxes grow as well.

III. CONGRESS, RATHER THAN PREEMPTING COURT OR STATE ACTION BY ITS INACTION, HAS LEFT THE FIELD TO THE STATES AND THIS COURT.

Petitioner argues that the states are precluded from enacting legislation like North Dakota's, and that the Court is precluded from allowing them to do so, because of what Petitioner seems to think is Congress' exclusive responsibility to define the scope of state tax powers. Petitioner quotes approvingly a commentator's statement that "making state tax law . . . is best left to Congress". Pet. Br. at 45 n. 40. Fortunately for the nation's federal system, that view is not reflected in the Constitution, the acts of Congress or the opinions of this Court. Making state tax law is best left to the states. The Tenth Amendment says so. U.S. Const. amend. X. And this Court has repeatedly said so. *See, e.g., Trinova*, 111 S. Ct. at 836; *Moorman v. Bair*, 437 U.S. 267, 279-80 (1978); *Wisconsin v. J.C. Penney*, 311 U.S. 435, 445 (1940).

Bellas Hess was not a provision of the Constitution or a Congressional enactment. It was the Court's best interpretation of the Constitution's requirements given the surrounding constitutional and factual framework at the time. Whether or not the present members of this Court would have assessed the then prevailing facts and constitutional environment the same way as their predecessors did twenty-four years ago, the Court must decide the present case in the light of today's constitutional and factual context. Particularly in the field of state taxation,

the Court has never ceded to Congress the Court's constitutional responsibility to clarify and modernize prior case law. On the contrary, in such cases as *Complete Auto* and *Goldberg*, it has moved the law forward with the economic realities of business and technology.

A. This Court Has Made Clear That Congress Will Not Be Deemed To Pre-empt The States In The Absence Of Clear Legislative Pre-emption Or Complete Occupation Of The Field.

Petitioner cites no congressional enactment through which Congress in the exercise of its power over interstate commerce has directed the states or the Court to refrain from action in this field. Instead it cites Congress' failure to produce legislation on the subject of this case over the past six years. Pet. Br. at 35 n. 26.

But the silence of Congress, at least in the absence of a comprehensive legislative framework inherently occupying the entire field, is not a barrier to state action or to this Court's action. In *Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 504 (1988), this Court said "preemption, if it is intended, must be explicitly stated." There cannot be "a preemptive grin without a statutory cat." *Id.* The Court demands "clarity and manifestness", *id.* at 500, before it will find that Congress intended to supersede the powers of the states. Thus, in the absence of some affirmative action by Congress, the states are free to do whatever the Court finds is not barred by some constitutional constraint.

B. Congress' Conscious Exclusion Of Sales Taxes From Its 1959 Legislation On Out-Of-State Solicitation, Its Silence After Statutorily Mandated Studies In 1964-65, And Its Inaction Since 1985 On The *Bellas Hess* Issue Show That Action Here Must Come From The States And The Court

In general, Congress and the courts have historically recognized the importance to federalism of non-interference by the federal government with state taxing authority. *See California v. Grace Brethren Church*, 457 U.S. 393, 410-11 nn. 23, 24 (1982). As a matter of common law, comity, and long-held statutory policy, federal courts have refrained from interjecting themselves into the state tax enforcement process. *See e.g. Franchise Tax Board v. Alcan Aluminum Limited*, 110 S. Ct. 661 (1990); *California v. Grace Brethren Church*, 457 U.S. 393 (1982); *Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981). *See also* Tax Injunction Act, 28 U.S.C. § 1341. Of course, once state remedies have been exhausted, this Court has met its responsibilities to apply the constraints of the Constitution, but always with due respect for the proper role of the states in designing their own tax systems. *Trinova*, 118 S. Ct. at 836; *J.C. Penney*, 311 U.S. at 444.

Three times in the postwar years, Congress has examined the scope of state taxing power over interstate businesses. But rather than signifying a legislative decision to occupy the field or to pre-empt either state or Court authority, Congress' action each time shows that Congress itself has left the issue in this case to the states, subject only to the limits this Court may impose.

The Court has previously considered Congress' 1959 action on the state income tax implications of sales solicitations by out of state businesses. *See Heublein Inc. v.*

South Carolina Tax Comm'n, 409 U.S. 275 (1972); *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978). *See also Wisconsin Dept. of Revenue v. William Wrigley Jr. Company*, 160 Wis. 2d 53 (Wis. Sup. Ct. 1991), *cert. granted* 60 U.S.L.W. 3257 (U.S. October 7, 1991) (No. 91-119). In that year, after this Court's decision in *Northwestern States Portland Cement Company v. Minnesota*, 358 U.S. 450 (1959), a precursor of *Complete Auto Transit*, 430 U.S. 274 (1977), many large interstate businesses, correctly anticipating that the Court was heading towards eliminating its proscription of state taxes on interstate transactions, went to Congress for anticipatory relief. The result was Pub. L. No. 86-272, 15 U.S.C. § 381 *et seq.*, which prohibits imposition of state net income tax on corporations based solely on solicitation of orders in the state, where acceptance is outside the state. See *Heublein*, 409 U.S. at 280; *United States Steel Corp.*, 434 U.S. at 455.

It is clear from the text and legislative history of the statute that Pub. L. No. 86-272 did not apply to sales taxes because the framers of the statute intended that the states continue to have full authority to levy sales taxes in accordance with the Court's broadening view of state tax powers over interstate commerce.[36]

For the next sixteen years, Congress was aware of these issues but did nothing. As the Court later noted, Congress in 1959

> also authorized a study for the purpose of recommending legislation establishing uniform standards to be observed by the States in taxing

[36] *See* 105 Cong. Rec. 16,362 (1959) (colloquy between Senators Bush and Bennett).

> income of interstate businesses. Although the results of the study were published in 1964 and 1965, Congress has not enacted any legislation dealing with the subject. [Court's Footnote: "There have been several unsuccessful attempts." [citing bills in 1965, 1966, 1971, 1973, 1975, including post-*Bellas Hess* bills that covered sales tax issues]].

United States Steel Corp. v. Multistate Tax Commission, 434 U.S. at 455-6.

As Petitioner points out, Congress again took up the *Bellas Hess* issue beginning in 1985, and regularly thereafter. Pet. Br. at 35. But again there was no congressional action, despite the proliferation of so-called "anti-Bellas" state laws,[37] enforcement of those laws, increasing voluntary compliance with those laws,[38] and state court decisions construing them.[39] It should be pointed out that the same interests which now claim that the legislative branch is the only appropriate authority to act on *Bellas Hess* fought vigorously to prevent congressional action to close the *Bellas Hess* loophole during this period. In a massive lobbying campaign, they enlisted their catalogue

[37] Brief of National Conference of State Legislatures *et al.* on Petition for Writ of Certiorari at 7 n. 6, *Quill Corporation v. State of North Dakota, cert. granted* 60 U.S.L.W. 3257 (U.S. October 7, 1991) (No. 91-194).

[38] Morse and Zimmerman, *Efforts to Collect Sales Tax on Interstate Mail-Order Sales, Recent State Legislation*, 12-13 and n. 35 (1990) (prepared for presentation to the National Conference of State Legislatures).

[39] *North Dakota v. Quill Corp.*, 470 N.W.2d 203 (N.D. 1991); *Bloomingdales By Mail Ltd. v. Huddleston*, No. 89-3017-II (Ch. App. March 21, 1991); *appeal filed* No. 01-SO1-9016-CH-0047 (Tenn. April 19, 1991); *SFA Folio Collection Inc. v. Huddleston*, No. 89-3015-III (Tenn. Ch. App. March 11, 1991).

customers to provide grassroots opposition to the pending legislation.[40] In fact, contradicting their present position that only Congress, and not the Court, can act to update *Bellas Hess*, their expert witness testified before the House Judiciary Committee in 1988 that Congress was precluded from acting because this Court had based *Bellas Hess* on the due process clause, over which Congress had no legislative authority, rather than solely on the commerce clause, over which Congress has "plenary power".[41]

This history leaves no doubt that Congress has not occupied the field of state taxation of interstate commerce, nor in any way preempted state or Court action in the field of state sales taxes. On the contrary, each of Congress' three ventures into this area have left the legal

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[40] *See Federal Report*, GOVERNING, at 24 (August 1989): The Direct Marketing Association " . . . held a summit meeting to plot strategy, and 300 companies contributed to a $1.5 million war chest, according to Robert Levering, vice president for government affairs of the Direct Marketing Association . . . . In addition 30 to 40 companies printed letters opposing the plan at their own expense and have begun inserting them in merchandise shipments to millions of customers." *Opposition to Sales Tax Idea Arrives in the Mail*, Baltimore Sun, April 2, 1989, at 1A, 14A.

[41] Testimony of Lucas A. Powe, Jr., on behalf of Direct Marketing Association and Magazine Publishers Association on H.R.1242 and H.R. 3521, *Interstate Sales Tax Collection Act of 1987 and the Equity in Interstate Competition Act of 1987: Hearing on H.R. 1242, H.R. 1981 and H.R. 3521 Before the Subcommittee on Monopoly and Commercial Law of the Committee on the Judiciary*, 100th Cong., 2d Sess. at 72 - 75 (1988): "The Court said, due process, and Congress cannot change due process decisions. Congress can change commerce clause decisions." *Id.* at 72.

landscape either untouched, or with a specific congressional statement that it did not intend to affect sales taxes.

Of course, if the Court affirms the decision below, and Congress wishes to address issues left open by the Court, or anticipate and resolve potential implementation issues, Congress can do so within the scope of its power over interstate commerce, as it did in 1959. *See*, Pub. L. No. 86-272. The possibility that Congress might some day act to improve on or supersede the Court's action, however, is no reason for the Court not to act at all, when faced with a clear constitutional controversy, especially one generated by its own prior ruling.

C. The States, Individually And Through Multistate Action, Have A Mutual Interest With Taxpayers In Implementing The Economic Presence Test Reasonably And Efficiently.

In such post-*Complete Auto* cases as *Trinova, Goldberg, and Amerada Hess Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury*, 196 U.S. 66, 72 (1989), this Court has emphasized that it will not attempt to impose a particular tax formula on the states, even if that may result in minor inconsistencies and inconveniences to taxpayers. As long as the states are reasonable and nondiscriminatory in their tax structures, the Court will allow them to choose their own tax rates, rules, and procedures.

Of course the states have a shared interest in making their tax systems as compatible and convenient as possible, and they have done so frequently in the past. Through such mechanisms as the Multistate Tax

Compact,[42] which became effective in 1967, the Multistate Tax Commission, established by the signatories to the Compact, and the Uniform Division of Income for Tax Purposes Act, adopted as part of the Compact by its signatories, many states have demonstrated their interest in "promoting uniformity and compatibility in state tax systems" and "facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration."[43]

The MTC has already focused on the need for uniformity and consistency in the sales and use tax area. Through its "uniformity" process, proposals for multistate action to coordinate state sales and use tax laws and enforcement are developed, circulated for taxpayer and other public comment, and recommended by the full Commission for adoption by the states. *See* MULTISTATE TAX COMMISSION REVIEW, Vol. 1991, No. 1 at 21-22 (March 1991).[44]

In addition, twenty-six states have joined MTC's National Nexus Program, which began in December 1990.

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[42] Considered and upheld by the Court in *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452 (1978).

[43] *United States Steel Corp.*, 434 U.S. at 456 (paraphrasing Multistate Tax Compact).

[44] The states have undertaken similar cooperative efforts to simplify compliance with state law in other fields. For example, the North American Securities Administrators Association and the National Association of Securities Dealers have jointly developed a Central Registration Depository which receives and processes state registration applications and fees for brokers and their representatives for all states. *See* NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., AN INTRODUCTION TO THE NASD, 13 (1990).

This multifaceted project provides assistance to states in securing taxpayer compliance and to taxpayers in complying with state tax laws. A key element is a central repository of information on the states' tax filing requirements. This information is available for distribution to any company that needs to determine the filing requirements in several states. Where taxpayers are concerned about potential past liability, the Program enables them to discuss their exposure and to fashion settlements anonymously, before they register.[45]

It is well known to the parties and many *amici* in this case that for the past year MTC and other state organizations have also been involved in discussions with the Direct Marketing Association and individual direct marketers in an effort to coordinate and simplify the administration of sales and use taxes, regardless of the outcome of this case. This Court's affirmance of the decision below would undoubtedly give new impetus to this process, which allows the industry as a whole to bring its concerns and suggestions directly to the responsible tax officials of a large number of states.

At the same time, affirmance will give clear guidance to the individual states as they update and conform their own statutes to accommodate developments in this Court, and thus make unnecessary what will otherwise be the continuing state experimentation with new ways to address the *Bellas Hess* problem. Although this Court need only decide the specific case presented to it – involving collection of one state's use tax – its analysis of

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[45] Davis, *The National Nexus Program: An Innovative Approach to Multistate Tax Compliance*, 1 STATE TAX NOTES, 450, 451 (Nov. 25, 1991).

North Dakota law, including the *de minimis* standard adopted by regulation, will substantially inform the other states' process of implementing the decision.

The Court can and should decide this case on the constitutional merits with assurance that it will be in the interest of each state, and of the states as a group, to identify and address sub-constitutional inconveniences which the Petitioner speculates may result from affirmance of the decision below.

IV. CONCLUSION

For the reasons stated herein, the decision of the Supreme Court of North Dakota should be affirmed.

Respectfully submitted,

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December 26, 1991

APPENDIX A

Catalogues Ranked By Number of States
for which Use Tax Is Collected
["P" indicates whether order forms are personalized]

# Jurisd.	Company	P.
47	All Week Long Eddie Bauer	Y
47	Businessland	N
47	Eddie Bauer Home	Y
47	Honeybee	Y
47	J.C. Penney	N
47	Laura Ashley	Y
47	Sears	N
47	Spiegel	Y
47	The Ultimate Outlet – Spiegel	Y
35	Victoria's Secret	Y
34	Greenpeace Catalog	N
34	Talbots	N
33	The Disney Catalog	Y
29	Godiva Direct	Y
27	Egghead Discount Software	Y
27	Sharper Image	Y
26	Coach	Y
25	Barrie Pace, Ltd.	Y
24	Williams-Sonoma	Y
23	Nature Company	Y
22	Brooks Brothers	Y
22	Carroll Reed	Y
22	Harry & David	Y
17	FAO Schwartz	Y
16	Bachrach by Mail	Y
16	Lord & Taylor	N
16	Neiman Marcus by Mail	Y
16	Pottery Barn	Y
15	Chambers	Y
15	Hold Everything	Y

14	Gardener's Eden	Y
13	REI	Y
12	Horchow	N
12	Rand-McNally	Y
10	Bloomingdale's By Mail Ltd.	Y
9	Care Package Catalog	N
9	National Wildlife	Y
9	Orvis	Y
9	Tiffany & Co.	N
8	Crate & Barrel	Y
8	Laurel Burch	Y
8	Unicef	Y
7	Nordstrom	N
6	J. Crew	Y
5	Clifford & Wills	Y
5	Global Computer Supplies	N
5	Just for Kids	Y
5	Metropolitan Museum of Art	Y
5	Performance Bicycle Shop	Y
5	Playclothes/Child Craft	Y
5	Sesame Street, The Catalog	N
4	Chelsea	Y
4	Day-Timers	Y
4	Diamond Essence	Y
4	Domestications	Y
4	Hammacher Schlemmer	Y
4	Land's End	Y
4	Land's End Kids	Y
4	Mark, Fore & Strike	Y
4	Night & Day	Y
4	Tapestry	Y
3	Bike Nashbar	Y
3	Community Kitchens	Y
3	MacWareHouse	Y
3	Quill	N
3	Raliegh's	N
3	Salvatore Ferragamo	N

3	Showcase of Savings	Y
2	After the Stork	Y
2	Bits & Pieces	Y
2	Brielle Gallaries	N
2	Brightscreek	Y
2	Exposures	Y
2	Grill Lover's Catalog	Y
2	Lillian Vernon	Y
2	Museum of Fine Arts	Y
2	Saks Fifth Avenue Folio	Y
2	Smythe & Co.	N
2	The Ben Silver Collection	Y
2	The Jewish Book Guide	N
2	The Right Start Catalogue	Y
2	Touch of Class Catalog	Y
2	Toys to Grow On	Y
2	Troll Learn & Play	Y
2	Tweeds	Y
2	World Wide Games	Y
1	Airline International	Y
1	Anticipations-Ross Simmons	Y
1	Aristoplay	N
1	Art Institute of Chicago	Y
1	Attitudes	Y
1	BILA	Y
1	Caly & Corolla	Y
1	Casual Living	Y
1	Christina Stuart	Y
1	City Spirit	Y
1	Claudia Christy	Y
1	Coldwater Creek	Y
1	DAK	N
1	Damark	Y
1	Down's	Y
1	Edgar B	N
1	Eximious	Y
1	Flax	Y

1	Fortune's Almanac	Y
1	Health Source	Y
1	Hearth Song	Y
1	Initials	Y
1	J. Jill Ltd.	Y
1	Jean Grayson's Brownstone Studio	Y
1	Jennifer Austin	Y
1	John Deere	Y
1	Keeping In Touch	Y
1	L. L. Bean	N
1	Lady Smith	Y
1	Lew Magram	Y
1	Lewis & Roberts	Y
1	Musuem of Modern Art	Y
1	Mystic Seaport Museum Stores	Y
1	Namark Funwear	N
1	Oriental Trading Co, Inc.	Y
1	Pepperidge Farm	Y
1	Play Fair Toys	Y
1	Pleasant Co. New Baby Collection	Y
1	Potpourri	Y
1	Scope	Y
1	Scully & Scully, Inc.	Y
1	Selfcare Catalogue	Y
1	Signals	Y
1	Source for Everything Jewish	Y
1	Sporty's	Y
1	Storybook Heirlooms	Y
1	Sundance	N
1	T. Anthony Ltd.	Y
1	The Anatomical Prod. Premier	Y
1	The Competitive Edge	Y
1	The Cottage Shop	N
1	The Mind's Eye	N

1	The Music Stand	Y
1	The Paragon	Y
1	The Personal Touch	Y
1	The Pet Catalog	Y
1	The Very Thing	Y
1	The Writewell Co.	Y
1	What on Earth	Y
1	Wintersilks	N
1	Wireless	Y
1	Wolferman's	Y
0	A.B. Lambdin	Y
0	CitiDollars	N
0	Garnet Hill	Y
0	Hanna Anderson	Y
0	Herrington	Y
0	Norm Thompson	Y
0	Solutions	N

Total Number of Companies: 155

APPENDIX B

EXCERPT FROM GREENPEACE CATALOG

Free With Every Order
Our Greenpeace bumper sticker lets the world know you care.

The Greenpeace Catalog
This catalog is produced under a licensing contract between Greenpeace USA and Winterland Productions. Winterland estimates that the contract will provide net proceeds to Greenpeace USA of over 50% of the available funds after product cost, sales tax, fulfillment costs, packaging, phone service, catalog production costs, returns, bad debts, mailing costs, etc. In addition to these funds, Greenpeace is pleased to be offering Greenpeace products for its supporters to involve and express themselves in Greenpeace's worldwide efforts.

Every item presented in this catalog is made to the highest quality standards. If you are dissatisfied for any reason, just return the item within 30 days for an exchange, credit or full refund. Fill in the enclosed return form and send your package, insured via UPS or Parcel Post (no C.O.D.'s accepted). We will do everything possible to handle your return quickly.

If you have questions about a product, about the status of your order or need the address of your nearest Greenpeace office, please call the Winterland Customer Service Department at 1-800-327-3223, Monday through Friday, 8:30 am to 6:00 pm (PST) Sept. 1-June 30, 1992. Saturday 8:30 am to 1:00 pm (PST) through Jan. 31, 1992, or write to our Customer Service Department at P.O. Box 77048, San Francisco, CA 94107-0048.

For Office Use Only

BATCH #	ORDER#	RECEIVED	INITIAL

Ordered By:

Daytime Phone
Evening Phone

PLEASE PRINT INFORMATION

Name

Address

City State Zip

Payment Method

❑ Check or money order enclosed (please no C.O.D.'s or cash). **United States currency only.**
❑ Charge to my account: ❑ American Express ❑ Visa ❑ Mastercard

NOTE: CHARGE RECEIPT WILL READ CCC FOR GREENPEACE

Account No. Expiration Date

Signature Required with all credit card purchases. Authorization No.

SHIP TO: If different from name and address at left.

Name

Address

City State Zip

INDICATE IF SHIP TO IS ❑ **RESIDENTIAL** ❑ **COMMERCIAL**

Item Number	Color	Description	Page Number	Size	Size Category Adult/Youth/Infant	Quantity	Price Each	Total
7405	BLK	(EXAMPLE) ENDANGERED RAINFOREST T-SHIRT	7	S	ADULT	3	$13.50	$XX.00

Free With Every Order *Our Greenpeace bumper sticker lets the world know you care.*

SHIPPING AND HANDLING:
If shipping to more than one address compute delivery charges for each address. Purchase Amount Per Shipping Address.

Continental U.S.	Fee
$0.00 to $25.00	$ 4.50
$25.01 to $50.00	$ 5.75
$50.01 to $100.00	$ 6.75
$100.01 to $200.00	$ 7.75
Over $200.00	$ 8.75

Poster (1 to 3 Units) Add. $ 1.50
Foreign Orders Add. $ 30.00

Check box for air.
❑ UPS Blue Label Add. $ 6.00
❑ Federal Express Standard Add. $ 9.00

Size Information
Adult sizes: Small (34-36), Medium (38-40), Large (42-44), Extra Large (46-48). Youth Sizes: Extra Small (2-4), Small (6-8), Medium (10-12), Large (14-16). Infant sizes: 12 mo. and 24 mo.
When In Doubt, Order One Size Larger.

Please Remember
1. Specify the style, size and color of each garment ordered, and whether Adult, Youth, or Infant size. **2.** Order only sizes and colors listed in the catalog. **3.** Include delivery charges (and sales tax where applicable). **4.** Make check or money order payable to CCC For Greenpeace (or fill in information requested for credit card charge.) **5.** Print your name and address in the corner of the return envelope. **6. This is the ONLY Greenpeace Catalog you will receive in the mail. Join us in our effort to conserve resources - save it for your orders through June 30, 1992 or recycle it to family and friends.**

***Add All Sales Tax For Delivery To:**
AL, AR, AZ, CA, CO, DC, FL, GA, IA, IL, IN, KS, KY, LA, MD, MI, MO, MS, NC, ND, NE, NM, NV, NY, OH, OK, SC, TN, TX, UT, VA, WA, WI, & WV

Call Toll-Free to Charge Your Order
Credit Cards only - $15.00 Minimum
1-800-456-4029
24 hours a day, 7 days a week.

Please have your credit card handy and your order form filled in to read to the operator.

All mail orders for the Winter Holidays received in our office by December 2 and phone orders placed with our operators by December 5, will be shipped for arrival by December 20, 1991.

Subtotal	
*Applicable Sales Tax	
Shipping	
Add For Air	
Poster	
Foreign	
TOTAL	

APPENDIX C

EXCERPT FROM J C PENNEY CATALOGUE

STATE	First 3 Digits of Zip Code	ZONE	Shipping Cost per lb.	Minimum Cost per Class C Order	State Sales Tax Rates (page 741)	Customer Service/ Return Dist. Center*
AL	All Zips	II	48¢	60.00	4¢,TR,LO	Atlanta
AK	See leaflet in this Catalog				0	Reno
AR	All Zips	II	65¢	80.00	4½¢,TR, LO	Kansas City
AZ	All Zips	II	65¢	80.00	5¢,LO	Reno
CA	962-966 (APO/FPO)	II	APO/FPO-Class A Merch. Only			Reno
	All Other Zips	•	65¢	80.00	5¢, TR, LO	•
CO	All Zips	II	65¢	80.00	3¢, TR, LO	Kansas City
CT	060, 061	I	42¢	64.00	8¢, TR	Manchester
	All Other Zips	II	•	•	• • (Omit tax on each article of footwear & clothing under $75, or clothing for kids under 10.)	•
DE	All Zips	II	42¢	64.00	0	Manchester
DC	All Zips	II	42¢	64.00	6¢	Manchester
FL	340 (APO/FPO)	II	APO/FPO-Class A Merch. Only			Atlanta
	All Other Zips	•	56¢	62.00	6¢, TR, LO	•
GA	300,303	I	47¢	60.00	4¢, TR, LO	Atlanta
	All Other Zips	II	•	•	• • •	•
Guam	See leaflet for Class A Rates					Reno
HI	See leaflet in this catalog for rates				4¢,TR	Reno
ID	All Zips	II	65¢	80.00	5¢,TR	Reno
IL	600-619	II	42¢	51.00	6¼¢	Milwaukee
	All Other Zips	•	65¢	80.00	• •	Kansas City
IN	463-466	II	42¢	61.00	5¢, TR	Milwaukee
	469, 478, 479	•	•	•	• •	•
	All Other Zips	•	42¢	65.00	• •	Columbus
IA	500-516, 525	II	65¢	80.00	4¢	Kansas City
	All Other Zips	•	42¢	61.00	• •	Milwaukee
KS	662	I	32¢	43.00	5.85¢†, TR	Kansas City
	All Other Zips	II	65¢	80.00	• •	•
KY	420-424	II	53¢	60.00	6¢	Atlanta
	All Other Zips	•	44¢	65.00	•	Columbus
LA	700-708, 713, 714	II	55¢	60.00	4¢, TR, LO	Atlanta
	All Other Zips	•	65¢	80.00	• • •	Kansas City
ME	All Zips	II	42¢	64.00	5¢	Manchester
MD	215, 217	II	44¢	65.00	5¢, TR	Columbus
	All Other Zips	•	42¢	64.00	• •	Manchester
MA	All Zips	II	43¢	61.00	5¢, TR	Manchester (Omit tax on footwear & clothing.)
MI	480-483	II	44¢	65.00	4¢, TR	Columbus
	All Other Zips	•	42¢	68.00	• •	Milwaukee
MN	560, 561	II	65¢	80.00	6¢, TR, LO	Kansas City
	All Other Zips	•	42¢	68.00	• •	Milwaukee (Omit tax on footwear & clothing.)
MS	All Zips	II	53¢	60.00	6¢, TR	Atlanta

STATE	First 3 Digits of Zip Code	ZONE	Shipping Cost per lb.	Minimum Cost per Class C Order	State Sales Tax Rates (page 741)	Customer Service/ Return Dist. Center*
MO	641	I	32¢	43.00	4.225¢, TR	Kansas City
	All Other Zips	II	65¢	80.00	• •	•
MT	594, 596-599	II	65¢	80.00	0	Reno
	All Other Zips	•	•	•	•	Kansas City
NE	All Zips	II	65¢	80.00	5¢, TR, LO	Kansas City
NV	894, 895	I	40¢	50.00	3½¢, TR, LO	Reno
	All Other Zips	II	65¢	30.00	• • •	•
NH	All Zips	II	42¢	64.00	0	Manchester
NJ	All Zips	II	42¢	64.00	7¢	Manchester (Omit tax on footwear & clothing.)
NM	All Zips	II	65¢	80.00	5¢, TR	Kansas City
NY	090-098 (APO/FPO)	II	APO/FPO-Class A Merch. Only			Manchester
	140-143, 147	•	55¢	70.00	4¢, TR, LO	Columbus
	All Other Zips	•	42¢	64.00	• • •	Manchester
NC	All Zips	II	49¢	60.00	3¢, TR, LO	Atlanta
ND	All Zips	II	42¢	68.00	5¢, TR, LO	Milwaukee
MP	Northern Marianas		See leaflet for Class A Rates			Reno
OH	432	I	38¢	48.00	5¾¢†	Columbus
	All Other Zips	II	•	55.00	•	•
OK	All Zips	II	65¢	80.00	4.5¢, TR, LO	Kansas City
OR	All Zips	II	65¢	80.00	0	Reno
PA	169, 180-196	II	42¢	64.00	6¢, TR	Manchester
	All Other Zips	•	70¢	80.00	• •	Columbus (Omit tax on footwear & clothing.)
Puerto Rico			See leaflet in this catalog for rates.			Atlanta
RI	All Zips	II	42¢	64.00	7¢	Manchester (Omit tax on footwear & clothing.)
SC	All Zips	II	48¢	60.00	5¢	Atlanta
SD	All Zips	II	65¢	90.00	4¢, TR, LO	Kansas City
TN	All Zips	II	48¢	60.00	5½¢, LO	Atlanta
TX	All Zips	II	65¢	80.00	6.25¢, TR, LO	Kansas City
UT	All Zips	II	65¢	80.00	5¢,TR,LO	Reno
VT	All Zips	II	42¢	64.00	4¢	Manchester
Virgin Islands	All Zips		See leaflet in this Catalog for rates.			Atlanta
VA	220-225, 227-246	II	53¢	60.00	4½¢, TR	Atlanta
	226	•	44¢	•	•	Columbus
WA	987 (APO/FPO)	II	APO/FPO-Class A Merch. Only			Reno
	All Other Zips	•	65¢	80.00	6½¢,TR,LO	•
WV	All Zips	II	42¢	60.00	6¢, TR	Columbus
WI	532	I	42¢	51.00	5¢, TR, LO	Milwaukee
	All Other Zips	II	•	•	• • •	•
WY	820, 822-828	II	•	•	3¢, TR, LO	Kansas City
	821, 829-831	•	•	•	• • •	Reno

*NOTE: See "Shopping by Mail" on page 740 for the Distribution Center to which your orders should be sent. It may be different from your Customer Service/Return Distribution Center. See page 746 for the full address of your Customer Service/Return Distribution Center.

These rates are subject to change at anytime.

†Rate includes local tax for Distribution Center Location.

TR Sales tax applies to transportation-and-handling charge on Home Delivery orders in these states—see Sales Tax section, page 741.

LO Local taxes (county, city, etc.) in these states must be included in payment—see Sales Tax section, page 741.